

SUBMISSION TO THE INQUIRY INTO PRIVATE PROPERTY RIGHTS

Legislative Council Standing Committee on Public Administration

The following submission is a personal one and does not represent the views of any other person, group or organisation.

I submit that:

1. As described by Adam Smith in 1776, private property rights have been a foundation stone on which modern, mostly democratic societies have been based. In turn, the protection in law offered to private property rights by most nations has allowed the capitalist or private enterprise (or free enterprise) economic system to raise the living standards of some two billion people within developing countries over the last 50 years such that they are no longer living in poverty as the term is generally understood. That this escape from poverty has also occurred to a remarkable degree in China where a one party authoritarian government has been in power for many decades shows how respect for private property rights (in the broadest sense) can and has achieved amazing benefits for humanity regardless of the type of government willing to protect private property rights.

See https://fee.org/articles/five-lessons-for-politicians-on-the-anniversary-of-adam-smiths-death/?utm_campaign=FEE%20Daily&utm_source=hs_email&utm_medium=email&utm_content=74750952&hsenc=p2ANqtz-8KE39-x1M-jwC7C9hjETpFZIHIAZVF7-YZXif6jT5xvcWukLlnv9aMYJKJGNE1wHiCEh0w8COB8wkfJOO8hopbj6Q&hsmi=74750952

See **In Defence of Secure Property Rights** by Wolfgang Kaspar. Published by The Centre for Independent Studies, Occasional Paper 84, 2003

2. I fully agree with all the values of private property rights as stated in points (a) to (d) inclusive within your Inquiry's Terms of Reference.
3. However, in our modern technological society, the definition of and application of the term 'private property rights' needs to be expanded to include rights that have not been previously considered. These include:
 - (a) The right of homeowners to solar energy so that the efficient operation of solar hot water systems and solar photovoltaic electricity generation systems is not materially or adversely impacted upon by the actions of neighbouring property owners, for example, by the construction of multi-storey buildings that could cast significant amounts of shade over existing dwellings and their solar-dependent infrastructure. This requirement for protection of access to solar energy also should apply to properties including dwellings that rely on the entry of sunlight to provide heat and/or light for the reasonable enjoyment of living or working within those properties.
 - (b) The right of private rural landowners to erect renewable energy generation systems such as large-scale solar PV or wind turbines, provided the adverse impacts of such systems on neighbours and/or the environment are assessed by competent independent bodies such as the Environmental Protection Authority to be minor or manageable.
 - (c) The right of people owning private residences to maintain existing views from their properties, provided that the purchase of those properties occurred at a time when land use zoning laws would not have allowed new buildings or other structures to be built on neighbouring properties in ways that would have significantly and adversely affected the views from the private residences or affected the aesthetics of living in those residences.
4. My greatest concern about the erosion of respect for property rights over recent decades relates to the protection of natural values on private land where the private landowner arguably obtains no meaningful or measurable financial or other benefit from the government-ordained protective measures and instead the overwhelming majority of benefits accrue to the public. In particular, the

ability of governments at both state and local level to impose conditions on private landowners to protect from clearing or from other deliberate acts that might degrade the value of natural vegetation on private land without the payment of compensation is theft. The owners of such land have generally purchased their properties with their own private money but are unable to derive an economic return from their private investment because of government determinations that public benefits from the protection of natural vegetation (which also includes the full range of biological species dependent upon such vegetation) outweigh the private benefits that the landowner would otherwise be able to obtain from farming or some other private use of the land.

In 2001, the newly elected state government announced that it would introduce legislation to protect native vegetation on private land, with the details of what those protective measures were to entail released (I believe) in 2003. Since then, the owners of private land containing native vegetation have been denied the ability to maximise their productive use of that land. Concessions allowing fence posts and firewood to be removed from such land have been of only minor benefit to private landowners, with the far larger economic benefits potentially able to be generated via cropping or the establishment of plantations etc denied.

In a similar way, state government restrictions on the use of wetlands on private land have included draining and filling of wetlands so as to allow use of the wetland for a productive purpose.

Overwhelmingly, the benefits of such restrictions have accrued to the general public, with few if any benefits being enjoyed by the owner of such lands.

In all cases where public benefits are created by government legislation or policy decisions at the expense of private benefits, state and/or local governments as appropriate should pay compensation to the owners of private land for lost earnings arising from the decisions of government.

Compensation should take the form **either** of the outright purchase of the affected land **or** one-off or annual payments for loss of earnings. As an interim measure only, governments should pay private landowners to manage their privately owned areas of natural vegetation or wetlands, while local governments should amend the ways in which they assess rates on private properties and remove private land providing public benefits from their rateable properties list. This may require state government payments to be made to local governments to compensate them for the reduced income from rates.

5. Restrictions on the use of land because of the risk of damaging bushfire – for example, not being able to build a house in a high bushfire risk area or only if certain expensive conditions are met – are often combined with the issue of reducing the bushfire risk on private land such that it reduces to a reasonable level the risk of a bushfire affecting a neighbouring property. In the latter case, I reluctantly accept the need for authorities to force a private landowner to take suitable actions to reduce to an acceptable level the risk of an unmanageable bushfire from spreading from a private property onto an adjoining or nearby private or public property, e.g., by undertaking regular prescribed burning of vegetation. In this situation, the ‘do no harm’ ethos applicable to a private property carrying a high bushfire fuel load mandates that the fuel load be reduced so that, should a bushfire start on that property or enter it from an adjoining or nearby property, the risk is minimised. However, the construction of a dwelling on a property that has a high bushfire risk (or on which a high bushfire risk can develop if appropriate measures are not taken) should not be subject to expensive restrictions, for example, requiring certain construction materials to be used or for firefighting equipment (such as firefighting pumps, water storage, overhead sprinkler systems powered by a pump not connected to the power grid, etc) to be provided. For such dwellings, respect for private property rights should overcome concerns about the risks to the dwelling’s inhabitants or firefighting personnel provided that:
 - (a) Properties with dwellings constructed within areas of high bushfire risk should not be defended by local bushfire brigades or state government firefighters. Such properties and their dwellings should be identified, placed on a public register and be allowed to burn during bushfire events; and
 - (b) The risk to life and property in such situation should be seen as (i) something to be accepted by the owners of the property as being their own personal responsibility and (ii) the financial issue of whether insurance for such properties can be held over such properties should be a matter to be resolved between the private landowners and insurance companies, without the involvement of government.

In other words, it should be a private decision by the owners of land with a high bushfire risk to manage their own situation when a bushfire threatens. Neither local or state governments should have the ability to prevent or impose expensive conditions on private people owning private land and choosing, in full knowledge of the bushfire risk, to live in a high bushfire risk situation.

NOTES:

1. My wife and I own two properties which we purchased some 20 years ago knowing they contained natural assets which were providing public benefits and in the clear understand that we would not be able to obtain private economic benefits from these properties. I declare our ownership of such land so that any real or perceived financial conflicts of interest arising from this submission, should my recommendations be accepted in part or in full, are clearly understood by members of the Standing Committee.
2. I support the views expressed by the presenters at <https://www.cato.org/events/property-rights-are-human-rights-why-how-land-titles-matter-indigenous-people> and recommend the presentation to members of the Standing Committee. One of the presenters is Tim Wilson, Australia's then Human Rights Commissioner, now a federal member of Parliament. He raises the issue of whether a change to Aboriginal land title rights in Australia is justified so that the holders of such titles actually own their private property as individuals rather than via communal or group ownership. The issue lies outside the Terms of Reference for this Inquiry but, in my view, it is important for the future well-being of many Aboriginal people that their land title rights are changed to become private property (individual) rights so that they have the ability to create and enjoy private benefits from the ownership of their own land.

Bernie Masters

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